

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DALE W. RICE,

Plaintiff,

No. CIV S-03-1448 PAN

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

ORDER

Pending before the court is plaintiff's motion for an award of attorneys' fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1). Plaintiff seeks fees based on 4.15 hours in 2003 at the rate of \$150.75 per hour (\$625.61), 21 hours in 2004 at the rate of \$155.05 per hour (\$3,256.05), and 3 hours in 2005 at the rate of \$160.00 per hour (\$480.00), for a total amount of \$4,361.66.¹

The EAJA provides that the prevailing party in a civil action against the United States may apply for an order for attorneys' fees and expenses within thirty days of final judgment in the action. An applicant for Social Security benefits receiving a remand under sentence four of 42 U.S.C. § 405(g) is a prevailing party, regardless of whether the applicant later succeeds in obtaining the requested benefits. Shalala v. Schaefer, 509 U.S. 292 (1993).

¹ Plaintiff seeks the higher hourly rate based on the Consumer Price Index ("CPI") figures for the western region of the United States rather than the national CPI figures.

1 In the instant case, plaintiff filed a motion for summary judgment March 9, 2004
2 and defendant filed a motion for remand on April 27, 2004. The matter was remanded for further
3 administrative proceedings concerning expert testimony. (See Memorandum of Decision filed
4 July 12, 2005.)

5 The Commissioner does not argue that the fees should not be granted because the
6 position of the United States was justified or because other special circumstances make an award
7 unjust. The Commissioner, however, argues that the amount of fees requested is unreasonable.

8 Defendant argues that the claimed 28.15 hours of attorney time is excessive
9 because plaintiff's counsel would not stipulate to a remand when it was offered and the court
10 agreed with defendant that remand was proper on the vocational issue only and declined to reach
11 plaintiff's other allegations of error. After a review of the proceedings in this case, there is merit
12 in defendant's contention that the fee award should be adjusted due to the fact that plaintiff did
13 not have success on the motion for summary judgment. On the other hand, the undersigned finds
14 that the reduction sought by defendant would be excessive. After carefully reviewing the file,
15 including the pending motion, the court finds a fee award in the amount of 22.15 hours reflects a
16 reasonable number of hours of attorney time as an EAJA award in this matter..

17 Plaintiff is entitled to an award of fees under the EAJA. However, the EAJA
18 directs the court to award a reasonable fee. In determining whether a fee is reasonable, the court
19 considers the hours expended, the reasonable hourly rate, and the results obtained. See
20 Commissioner, INS v. Jean, 496 U.S. 154 (1990); Hensley v. Eckerhart, 461 U.S. 424 (1983);
21 Atkins v. Apfel, 154 F.3d 986 (9th Cir.1998). Taking a reasonable rate and multiplying it by a
22 reasonable amount of expended hours is not the only task left to the district court under the
23 EAJA. Atkins, 154 F.3d at 989. The court must also consider the results obtained. Id.

24 In considering a reasonable rate for attorneys' fees, an increase in the statutory
25 rate of \$125.00 may be justified to account for inflation. See Ramon-Sepulveda v. INS, 863 F.2d
26 1458, 1463- 64 (9th Cir.1988) (adding inflationary adjustment to statutory maximum). The

COLA adjustment to the statutory cap is computed by multiplying the cap by the consumer price index for urban consumers for the year in which the fees were earned, then dividing by the consumer price index figure on the date that the cap was imposed by Congress. Russell v. Sullivan, 930 F.2d 1443 (9th Cir. 1991). The national, rather than local change in cost of living should be applied to adjust the EAJA rate cap because “if Congress had wanted to allow for cost of living adjustments in a particular region or city, it could have done so in the statute.” Stewart v. Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993). The court will apply the formula using the March 1996 CPI of 155.7, the annual CPI for 2003 of 184.0, and the annual CPI for 2004 of 188.9.² See U.S. v. Real Property Known as 22249 Dolorosa Street, Woodland Hills, Cal., 190 F.3d 977 (9th Cir.1999); Sorenson v. Mink, 239 F.3d 1140, 1148-49 (9th Cir. 2001) (fees based on date legal services performed, not current date). Accordingly, the court finds a reasonable hourly rate for attorney time, adjusted for inflation, to be \$147.63/hour for 2003 and \$151.65/hour for 2004. (See calculations at nn.3,4 at 4, *infra*.)

Therefore, counsel for plaintiff is entitled to an EAJA fees award of \$4,267.56, which can be broken down as follows:

2003: 4.15 hours at \$147.63 per hour³ = \$ 612.66

2004: 18.0 hours at \$151.65 per hour⁴ = \$ 2,729.70

The court will order that the motion for attorney fees under EAJA be granted and that counsel for plaintiff be awarded a total EAJA award of \$3,342.36.

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² See U.S. Department of Labor Bureau of Labor Statistics website at <http://data.bls.gov/cgi-bin/surveymost>, accessed July 27, 2006.

³ The 2003 Annual CPI figure of 184.0 represents an increase of 18% from the March 1996 figure (184.0 minus 155.7 equals 28.3; 28.3 divided by 155.7 equals .181). This represents an increase in the \$125.00 hourly rate to \$147.63 an hour. (\$125.00 times .181 = \$22.63; \$125.00 plus \$22.63 equals \$147.63).

⁴ The 2004 Annual CPI figure of 188.9 represents an increase of 21% from the March 1996 figure (188.9 minus 155.7 equals 33.2; 33.2 divided by 155.7 equals .2132). This represents an increase in the \$125.00 hourly rate to \$151.65 an hour).

Accordingly, IT IS HEREBY ORDERED that:

1. Counsel for plaintiff's November 15, 2005 petition for attorney fees is granted in part; and
2. Fees pursuant to EAJA are awarded to counsel for plaintiff in the amount of \$4,267.56.

DATED: August 17, 2006.


UNITED STATES MAGISTRATE JUDGE

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